In The High Court of Judicature at Madras.

Dated: 14/08/2003

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The Honourable Mr.Justice P.K.MISRA

Writ Petition No.11416 of 1999 and Writ Petition No. 12416 of 1999

The Zonal Manager
Food Corporation of India
2,Haddows Road
Madras.6 ..... Petitioner in both the petitions

-Vs-

1. The Workmen
rep. by the Convener
FCI Labour Federation
7/2 Barma Kanakamma street
West Mambalam
Chennai.33.

2. The Industrial Tribunal,
Tamilnadu High Court Campus
Chennai.104.

3. FCI Workers Union
through its Assistant Secretary
58/1 Diamond Harbour Road
Calcutta.
(R3 impleaded as per the order of
Court in WMP No.16890 of 1999
dated 28.01.2000) .... Respondents in WP No.11416 of 1999

1.The General Secretary
FCI United Employees Union
No., FCI Road Chathiram
Pattabiram
Chennai.72.

2. The President
Tamilnadu FCI Worker's Union
No.50, Parvathi Illam
Amman Koil Street
Dr.Ambethkar Nagar
Pattabiram Nagar
Chennai.72.

3. The Industrial Tribunal
Tamilnadu High Cort Campus
Chennai.104.

4. Workmen of FCI Avadi Depot
rep, by FCI Workers Union (Regd.No.8219)
(R4 impleaded as per order of Court
dated 14.01.2000 in WMP No.21458 of 1999)
Respondents in WP No.12416 of 1999

Petitions filed under Article 226 of the Contitution of India for the issue of Writs of Certiorari as stated therein.

!For petitioners :: Mr.N.G.R.Prasad
for Mr.S.Vijayakumar

^For respondents :: Mr.L. Chandru Sr.counsel
for Mr.R.Ganesan
for RR1,2 & 4 in WP 12416/1999
Mr.R.Yashod Varadhan
for R3 in WP No.11416 of 1999

:O R D E R

These two writ petitions have been filed on behalf of te Food Corporation of India (hereinafter referred to as FCI) against the awards dated 29.07.1998 in I.D.No.55 of1993 and dated 09.12.1997 in I.D.No.39 of 1992 respectively, directing the FCI to regularise the services of the workmen emloyed in different storage depots of FCI in South India where notifications have been issued prohibiting the engagements of contrct labourer under Section 10 (1) of the Contract Labour (Regulations and Abolition) Act (hereinafter called as 'the Act')

2. The award in I.D.No.39 of 1992 impugned in W.P.No.12416 of 1999 is confined to regularisation of contract labourers engaged through the Co-operative Society in respect of Avadi Depot whereas the award in I.D.No.55 of 1993 impugned in W.P.No.11416 of 1999 is for regularisation of workmen employed in different depots of the FCI in South India. As a matter of fact the latter award in I.D.No.55 of 1993 is more less based on the award in I.D.No.39 of 1992.

3. The facts and circumstances and the question of law in both the matters being similar and both the writ petitions, both the matters which were heard together shall be disosed of by this Common Order.

4. It is necessary to notice the facts and circusmtances of the in both the cases. W.P.No.12416of 1999 relates to direction regaring regularisation of labourers employed through the Co-operative society in FCI Godown at Avadi. Before 1975, the labourers in the said concern were being engaged through different contactors. However, since 1 975 the workmen formed the workers' Co-operative society named Thiru Vi.ka. And such labourers were being employed in the depot and the payments were being made to the Co-operative society. In course of time, various notifications were issued by the Central Government abolishing the emloyment of labourers through contract

labourer system in all parts of India including FCI godown/ depot in South India. On the abolition of the aforesaid system, the labourers raised demands regarding their regularisation and ultimately reference was made and numbered as I.D.N.39 of 1992. On behalf of the Union, one claim statement was filed indicating about the continuous engagement of various labourers for more than 15 years. The reference in the said case was to the following effect: "Whether the action of the management of Food Corporation of India, in denying to regularise 955 contract labourers engaged by management of Food Corporation of India Godown, Avadi through TVK Cooperative Society in respect of names as given in the Annexure is justified? If not to what relief they are entitled to?" 5. Even though counter was filed on behalf of the management in the same I.D.No.39 of 1992, the basic allegations that the workmen had continued to work for a long period was not disputed. The management claimed that since the workman had formed co-oeprative society and it cannot be said that such workmen were directly employed under the FCI in the connected W.P.No.11416 of 1999, reference was to the following effect: 'Whether the services of workmen employed in different Food Storage depots in Food Corporation of India in the south where notifications have been issued prohibiting enagement of contract labourers under Section 10 (1) of CL (R & A) Act are entitl to be regularised and if so, from which date?' 6. In the said reference similar averment had been made on behalf of the workmen indicating that persons had been employed for more than 15 years on abolition of contract labourer system such person also continued, it was also indicated that the labourers engaged through contractors in many other godowns/depots in India had been regularised. On the basis of the decision of the Supreme Court reported in 1997 I LLJ 1113 (AIR INDIA STAUTORY CORPORATION ETC. v. UNITED LABOUR UNION & OTHERS), the claim was made by the workmen that on abolition of contract labourers system such labourers should be treated as direct employment. No counter had been filed for the said I.D.No.55 of 1993. 7. In I.D.No.39 of 1992, two witnesses were examined on behalf of the workmen and several documents were marked including the judgments of Karnataka and Kerala High Courts wherein in similar circusmtances a direction had been issued for regularisation of the concerned workmen. The Industrial Tribunal, on considering the facts and circumstances in the industrial dispute, after referring to the various materials on record, found that the labourers had been engaged through other contractors prior to 1975 and subsequently they have formed a society and they were being engaged through such society. It was further found that after the notification, abolishing the contract labour system, there was no further contract with the society and yet the labourers were continued to be employed and direct payment was being made. It was also found that in other parts of the country such labourers engaged through contractors or society had been regularised and direction for regularisation had been issued under similar circumstances in Kerala and Karnataka in respect of the depots/godowns of FCI in those States. It was also found that there was inter changeability among the labourers and some transfer orders had been passed. After noticing all these features, the Tribunal on the basis of the decision of the Supreme Court in Air India cases, gave a direction for regularisation of the concerned labourers.

8. In the subsequent I.D.No. 55 of 1993 no counter had been filed by the management to rebut the claim made by the workman. By the time the said

dispute was taken up for decision, the award in I.D.No.39 of 1992 had already been passed. The Tribunal after referring to the decision in Air India case and mainly re lying upon the earlier award in I.D.No.39 of 1992, issued a direction for regularisation of all workmen employed in different food depot of FCI South India wherein notifications under Section 10(1) of the Contract Labour (Regulation and Abolition) Act had been issued. 9. Learned counsel appearing for the petitioner has submitted with more optimism and less conviction, that the awards in both the disputes were primarily based on the ratio on the decision of the Supreme Court in Air India case and since such decision of the Supreme Court has been overruled in the mean time in the decision reported in (2001) 7 SCC 1 (Steel Authority of India Ltd. v. National Union Waterfront Workers) both the awards should be quashed and if necessary, the matter may be remanded for further consideration. He has further submitted that on abolition of contract labour system under Section 10(1), the erstwhile labourers do not become direct employees under the employer as has already held by the Supreme Court in the later case. Therefore, the direction for regularisation should not have been issued. It has been further submitted by him that in the present case there is no allegation that the contract between the management and the Co-oprative societies through whom the labourers were employed was sham and therefore, the question of regularisation would not arise as such the labourers were employed by the co-operative society.

10. Eventhough such submission of learned counsel appearing for the petitioners in both the writ petitions is prima facie attractive, on close scrutiny I am not inclined to accept such submissions, keeping in view the facts and circumstances of the present case, it is of course true that the Tribunal in award in I.D.No.39/19 92 has referred to the decision of the Supreme Court in Air India case and therefore a part of the reasoning may appear to be nonexistent in view of the subsequent over-ruling of the said decision, the other findings recorded by the Tribunal are tell-tale and the award can be sustained on the basis of those findings. The Tribunal has catagorically found that eventhough the labourers were engaged thourgh the co-operative society from 1975 till 1990 after 1991 when the notification under section 10(1) of the Act was issued there was no involvement of contractor and yet the labourers were continued to be employed. The Tribunal has further found that thefreafter there was direct payment to the labourers and even on some occassions the labourers were transferred. It has been further found that the work was parrennial in nature. In view of these findings which are sufficient to justify the award regarding regularisation, I am not inclined to accept the submission that the matter is required to be reconsidered in the light of the subsequent decision of the Supreme Court in SAIL case. The basic findings are available on record. The dispute is continuing since more than a decade in such circumstances it would be a travesity of justice to prolong the matter further.

11. In this context it has to be remembered that except the godowns/depots in Tamilnadu, the labourers engaged in similar capacity in other parts the country have been departmentalised or regularised and even in Tamilnadu in respect of Egmore and Port godowns of FCI the labourers have been deparmentalised.As already noticed, the Tribunal has also relied upon the

decisions of the Kerala and Karnatak Highh Courts where similar labourers have been regularised. FCI is a Corporation having transactions throughout India. Since the labourers in other parts of India have been regularised under similar circumstances, it woulds be most improper and unjust to deny such benefit to the concerned workmen.

12. Learned counsel appearing for the petitioners has vehemently contended that the Tribunal had gone beyond the scope of reference and as such the award is unsustainable. The law is well settled that a reference need not be considered in a pedantic manner by the Tribunal. In the present case, the Tribunal has considered the relevant circumstances and eventhough it has placed reliance upon the decision of the Supreme Court in AIR INDIA case which has been subsqeuently overruled, the reasonings given by the Tribunal justify the direction regarding the regularisation even applying the standard laid down by the Supreme Court in SAIL case.

13. Learned counsel appearing for the petitioners also submitted that evenafter the abolition of contract labour system, the question of regular absorption is a matter of discretion of the management. Even if such submission is prima facie acceptable, it is to be noticed that in the present case, the direction regarding the regularisation is based on various relevant circumstances. Moreover, as already indicatedwhen the labourers engaged in godowns/deposts in similar capacity in other parts of the country had been regularised by FCI, it would not be proper on the part of the management to seek refuge under a technical plea. In the result, for the aforesaid reasons, I do not find any merit in these writ petitions and they are accordingly dismissed. Consequently, connected pending W.M.P and W.P.M.Ps. are also dismissed.

Index : Yes
Internet:Yes

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